

§ 2520.104a-1

independent qualified public accountant with respect to the financial statements and accompanying schedules for both of the two plan years.

(2) The annual report for the second of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with section 103(b) of the Act and regulations promulgated thereunder with respect to both plan years;

(ii) A report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both plan years; and

(iii) A statement identifying any material differences between the unaudited financial information relating to, and contained in the annual report for, the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report for the immediately following plan year.

(c) *Accountant's examination and report.* The examination by the accountant which serves as the basis for the portion of his report relating to the first of the two consecutive plan years may be conducted at the same time as the examination which serves as the basis for the portion of his report relating to the immediately following plan year. The report of the accountant shall be prepared in conformity with section 103(a)(3)(A) of the Act and regulations thereunder.

[46 FR 1265, Jan. 6, 1981]

Subpart E—Reporting Requirements

(The information collection requirements contained in subpart E were approved by the Office of Management and Budget under control number 1210-0016)

§ 2520.104a-1 Filing with the Secretary of Labor.

(a) *General reporting requirements.* Part 1 of title I of the Act requires that the administrator of an employee benefit plan subject to the provisions of part 1 file with the Secretary of Labor certain reports and additional documents. Each report filed shall accurately and comprehensively detail the

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information required. Where a form is prescribed, the reports shall be filed on that form. The Secretary may reject any incomplete filing. Reports and documents shall be filed as specified in this part.

(b) *Exemption for certain welfare plans.* See §§ 2520.104-20, 2520.104-21, 2520.104-22, 2520.104-24, and 2520.104-25.

(c) *Alternative method of compliance for pension plans for certain selected employees.* See § 2520.104-23.

[42 FR 37185, July 19, 1977]

§ 2520.104a-2 Plan description reporting requirements.

(a) *General obligation to file.* Under section 104(a)(1)(B) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall file with the Secretary a plan description within 120 days after the plan becomes subject to part 1, and an updated plan description, which the Secretary shall not require more frequently than once every five years.

(b) *Fulfilling the filing obligation.* The administrator of an employee benefit plan shall satisfy the requirements of section 104(a)(1)(B) of the Act and paragraph (a) of this section by filing with the Secretary a summary plan description and an updated summary plan description in accordance with section 104(a)(1)(C) of the Act and regulations issued thereunder.

(c) *Special rules for plans subject to deferred initial reporting requirements.* See §§ 2520.104-3, 2520.104-5, and 2520.104-6.

[44 FR 31640, June 1, 1979, as amended at 45 FR 15529, Mar. 11, 1980]

§ 2520.104a-3 Summary plan description.

(a) *Filing obligation.* The administrator of a plan subject to the provisions of part 1 of title I of the Act shall file with the Secretary of Labor a copy of the summary plan description which is required to be furnished to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan, as well as a copy of the statement of ERISA rights. The copy of the summary plan description shall be filed on or before the last date on which a summary plan description

may be furnished to such plan participants and beneficiaries under section 104(b)(1)(B) of the Act and § 2520.104b-2.

(b) *Filing of multiple summary plan descriptions.* In the case of a plan for which the plan administrator has chosen under § 2520.102-4 to prepare more than one summary plan description, the plan administrator shall file with the Secretary a copy of each such summary plan description and a list identifying each such summary plan description. The name of the plan sponsor and the employer identification number (EIN) assigned to the plan sponsor by the Internal Revenue Service shall appear on the cover page of each summary plan description filed and also on the list of such summary plan descriptions.

(c) *Terminated plans.* (1) If on or before the date by which a plan is required to file a summary plan description or updated summary plan description under this section, the plan has terminated within the meaning of paragraph (c)(2) of this section, such plan is not required to file a summary plan description with the Secretary.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) In the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) In the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(d) *Filing address.* The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

(e) *Alternative requirements for plans subject to the alternative ERISA Notice requirements.* See § 2520.104b-2, and

§ 2520.104-5 or § 2520.104-6. See § 2510.3-3(d).

[42 FR 37185, July 19, 1977, as amended at 54 FR 8629, Mar. 1, 1989]

§ 2520.104a-4 Material modifications to the plan and changes in plan description information.

(a) *General obligation to file.* The administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall file with the Secretary, as required by section 104(a)(1)(D) of the Act, any material modifications in the terms of the plan or any changes in the information required by section 102(b) of the Act.

(b) *Fulfilling the filing obligation.* (1) The administrator of an employee benefit plan shall satisfy the requirements of section 104(a)(1)(D) of the Act and § 2520.104(a)-4(a) by filing with the Secretary a summary of material modifications or changes in information which is required by § 2520.104b-3. The summary description of such material modifications or changes shall be filed, in accordance with § 2520.104a-7, no later than the date on which the summary description is required to be disclosed to participants.

(2) The administrator of an employee benefit plan is not required to file a summary of any material modifications or changes in information required to be included in the summary description if such modifications or changes are:

(i) Incorporated in a summary plan description or supplement filed with the Secretary of Labor pursuant to § 2520.104a-3;

(ii) Incorporated in the plan description filed with the Secretary within 120 days after the plan becomes subject to part I of title I of the Act and pursuant to § 2520.104a-2.

(iii) Incorporated in an updated plan description filed with the Secretary pursuant to section 104(a)(1)(B) of the Act.

(c) *Filing address.* The summary description of material modifications to the plan and changes in the information required by section 102(b) shall be filed with the Secretary of Labor by mailing it to SMM, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200